

# EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

VIOLET MACKRIZZ,  
*Plaintiff,*

v.

LOWE'S HOME CENTERS, LLC,  
*Defendant.*

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§  
§  
§

CIVIL ACTION NO. \_\_\_\_\_

JURY TRIAL DEMANDED

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**DEFENDANT'S INDEX OF MATTERS BEING FILED**

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Pursuant to Local Rule CV-81, Defendant hereby attach this Index of Matters Being Filed to its Notice of Removal.

**Exhibit 1:** All Executed Process:

- Executed Return of Service on Lowe's Home Centers, LLC on September 13, 2021;

**Exhibit 2:** All State Court Pleadings:

- Plaintiff's Original Petition filed August 20, 2021
- Defendant's Original Answer and Jury Demand filed October 10, 2021

**Exhibit 3:** State Court Docket Sheet

**Exhibit 4:** List of all counsel of record, including addresses, telephone numbers, and parties represented.

# EXHIBIT 1

*(All Executed Service of Process)*

**CAUSE NUMBER: 2021-52207**

**VIOLET MACKRIZZ**  
**PLAINTIFF**

**VS.**

**LOWE'S HOME CENTERS, LLC**  
**DEFENDANT**

**IN THE 113TH JUDICIAL DISTRICT  
COURT OF HARRIS COUNTY, TEXAS**

**RETURN OF SERVICE**

My name is **D'ANN WATHEN**. I am over the age of eighteen (18), I am not a party to this case, and have no interest in its outcome. I am in all ways competent to make this affidavit and this affidavit is based on personal knowledge. The facts stated herein are true and correct. My business address is: 1320 QUITMAN ST. STE 100, HOUSTON, HARRIS COUNTY, TX 77009, U.S.A.

**ON Wednesday September 08, 2021 AT 03:50 PM - CITATION, PLAINTIFF'S ORIGINAL PETITION, came to hand for service upon LOWE'S HOME CENTERS, LLC (IS A FOREIGN LIMITED LIABILITY COMPANY) BY SERVING ITS REGISTERED AGENT CORPORATION SERVICE COMPANY (D/B/A CSC- LAWYERS INCORPORATING SERVICE COMPANY).**

**On Monday September 13, 2021 at 10:32 AM - The above named documents were hand delivered to: LOWE'S HOME CENTERS, LLC (IS A FOREIGN LIMITED LIABILITY COMPANY) BY SERVING ITS REGISTERED AGENT CORPORATION SERVICE COMPANY (D/B/A CSC- LAWYERS INCORPORATING SERVICE COMPANY) @ 211 E 7TH ST SUITE 620, AUSTIN, TX 78701, in Person.** By delivering to Samantha Guerra, designated agent.

**FURTHER AFFIANT SAYETH NOT.**

STATE OF TEXAS

DECLARATION

"My name is **D'ANN WATHEN**, my date of birth is 12/21/1971 my business address is **1320 QUITMAN STREET, HOUSTON, TX 77009**, and I declare under penalty of perjury that this affidavit is true and correct."

Executed in Harris County, State of Texas on Monday September 13, 2021

**/s/D'ANN WATHEN**

Declarant

**PSC#6602 EXP. 06/30/21**

Appointed in accordance with State Statutes

2021.09.588981

# EXHIBIT 2

*(All State Court Pleadings)*

2021 CAUSE NO. 52207 / Court: 113

**VIOLET MACKRIZZ**

*Plaintiff,*

vs.

**LOWE'S HOME CENTERS, LLC**

*Defendant.*

**IN THE DISTRICT COURT OF**

**HARRIS COUNTY, TEXAS**

**JUDICIAL DISTRICT**

**PLAINTIFF'S ORIGINAL PETITION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

COMES NOW, VIOLET MACKRIZZ, Plaintiff, complaining of Defendant, LOWE'S HOME CENTERS, LLC, and for the cause of action would respectfully show the following:

**DISCOVERY CONTROL PLAN**

1. Discovery is intended to be conducted under Level 3 of Tex. R. Civ. P. 190. Plaintiff affirmatively pleads she seeks monetary relief in excess of \$250,000.00 but no more than \$1,000,000.00.

**PARTIES**

2. Plaintiff, VIOLET MACKRIZZ ("MACKRIZZ"), is an individual and resident of Tomball, Harris County, Texas.

3. Defendant, LOWE'S HOME CENTERS, LLC ("LOWE'S HOME CENTERS"), is a foreign limited liability company doing business in the State of Texas, and may be served through its registered agent: CORPORATION SERVICE COMPANY D/B/A CSC-LAWYERS INCORPORATING SERVICE COMPANY at 211 E. 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701, or wherever it may be found. Citation is requested at this time.

**VENUE**

4. Venue is proper in Harris County, Texas, as this is the county in which all or a substantial part of the events or omissions giving rise to Plaintiff's claim occurred. Tex. Civ. Prac. & Rem. Code § 15.002 (a)(1) and Tex. Ins. Code § 1952.110(1).

### **FACTUAL BACKGROUND**

5. This lawsuit results from an incident that occurred on or about March 13, 2020, at Lowe's Home Improvement located at 19580 Tomball Parkway, TX-249, Houston, Texas 77070. On the aforementioned date, Plaintiff was walking out of Lowe's Home Improvement when suddenly Plaintiff tripped over uneven concrete, fell to the ground, and suffered serious injuries.

6. At the time of the incident Defendant LOWE'S HOME CENTERS is responsible for the uneven concrete of the premises. Defendant LOWE'S HOME CENTERS allowed uneven concrete to be left in an area where it was clear pedestrians would walk at all times of the day. In addition, the property was owned and maintained by Defendant LOWE'S HOME CENTERS. As a result of the aforementioned dangerous and hazardous condition caused by Defendant LOWE'S HOME CENTERS' negligence, Plaintiff sustained personal injuries and damages as will be more fully described hereinafter.

### **CAUSE OF ACTION AGAINST LOWE'S HOME CENTERS**

7. On the date in question, Plaintiff was an invitee on Defendant LOWE'S HOME CENTERS' premises. At all times relevant, Defendant LOWE'S HOME CENTERS maintained, controlled, or was a possessor of the premises. A condition on the premises posed an unreasonable risk of harm. Specifically, uneven concrete was permitted to remain in an area where customers and pedestrians walked.

8. Defendant LOWE'S HOME CENTERS knew or reasonably should have known, of the danger posed by the uneven concrete. It breached its duty of ordinary care by either failing to (1) adequately warn Plaintiff of the dangerous condition or (2) make the condition reasonably safe. Defendant LOWE'S HOME CENTERS' breach was a proximate cause of Plaintiff's injuries and damages.

**NEGLIGENCE**

9. On the occasion in question, Defendant LOWE'S HOME CENTERS committed acts of omissions and commission which collectively and separately constituted negligence. Defendant LOWE'S HOME CENTERS had a duty to exercise ordinary care, meaning that degree of care that would be used by any company or ordinary prudence under the same or similar circumstances, and Defendant LOWE'S HOME CENTERS breached that duty, including but not limited to, one or more of the following:

- a. Failing to inspect the premises for a dangerous condition;
- b. Failing to make safe a dangerous condition;
- c. Failing to eliminate the risk of harm;
- d. Failing to prevent customer exposure to harm;
- e. Failure to warn of existing harm;
- f. Failing to warn customers of a dangerous condition; and
- g. Otherwise failing to maintain its premises in a safe condition.

10. Defendant LOWE'S HOME CENTERS' breaches were a proximate cause of the occurrence in question and the injuries and damages sustained by Plaintiff.

**DAMAGES – MACKRIZZ**

11. As a result of the occurrence in question, Plaintiff sustained serious personal injuries, mental anguish, physical pain and suffering, medical expenses in the past, and impairment and disability in the past. It is believed she will also suffer legally recoverable damages in the future. Plaintiff will respectfully request the Court and Jury to determine the amount of loss she has incurred and will incur in the future, not only from a financial standpoint but also in terms of good health and freedom from pain and worry.

12. There are certain elements of damages provided by law Plaintiff is entitled to have the jury in this case consider separately to determine the sum of money for each element that will

fairly and reasonably compensate her for the injuries, damages, and losses incurred from the date of the accident in question until the time of trial of this case. Those elements of damages are as follows:

- a. The physical pain Plaintiff has suffered from the date of the occurrence in question up to the time of trial and in the future;
- b. The mental anguish Plaintiff has suffered from the date of the occurrence in question up to the time of trial and in the future;
- c. The amount of reasonable medical expenses necessarily incurred in the treatment of Plaintiff's injuries from the date of the accident in question up to the time of trial and in the future;
- d. The loss and/or reduction of earnings and/or earning capacity sustained by Plaintiff from the date of the occurrence in question up to the time of trial and in the future;
- e. The disfigurement which Plaintiff has suffered from the date of the occurrence in question up to the time of trial and in the future; and
- f. The physical impairment which Plaintiff has suffered from the date of the occurrence in question up to the time of trial.

**NOTICE THAT DOCUMENTS WILL BE USED**

13. Pursuant to Tex. R. Civ. P. 193.7, Plaintiff hereby gives notice all documents produced by Defendant LOWE'S HOME CENTERS in response to written discovery may be used at any pre-trial proceeding or at the trial of this case.

**DESIGNATED E-SERVICE EMAIL ADDRESS**

14. The following is the undersigned attorney's designated e-Service email address for all e-served documents and notices, filed and unfiled, pursuant to Tex. R. Civ. P. 21(f)(2) & 21a: eserve@hlalawfirm.com. This is the undersigned's only e-Service email address, and service through any other email address will be considered invalid.

**PRAYER**

**WHEREFORE, PREMISES CONSIDERED**, Plaintiff prays Defendant LOWE'S HOME CENTERS be cited in terms of law to appear and answer herein; and upon final trial

hereof, Plaintiff has judgment against Defendant LOWE'S HOME CENTERS for all damages, punitive damages, legally recoverable pre-judgment, and post-judgment interest, all costs of court, and any other further relief to which Plaintiff may show herself justly entitled.

Respectfully submitted:

**HUSAIN LAW + ASSOCIATES, PC**

By: /s/ Joshua R. Leske

JOSHUA R. LESKE

TBN: 24060162

5858 Westheimer Rd., Suite 400

Houston, Texas 77057

Telephone (713) 800-1200

Facsimile (713) 800-0786

E-Service: eserve@hlalawfirm.com

**COUNSEL FOR PLAINTIFF**

## CAUSE NO. 2021-52207

VIOLET MACKRIZZ

§

IN THE DISTRICT COURT

*Plaintiff,*

§

v.

§

HARRIS COUNTY, TEXAS

LOWE'S HOME CENTERS, LLC,

§

*Defendant.*

§

113<sup>TH</sup> JUDICIAL DISTRICT

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**DEFENDANT LOWE'S HOME CENTERS, LLC'S  
ORIGINAL ANSWER**

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Defendant, Lowe's Home Centers, LLC, ("Lowe's") hereby files its Original Answer to Plaintiff's Original Petition as follows:

**I.****GENERAL DENIAL**

1. Lowe's denies each and every, all and singular, the material allegations contained within Plaintiff's pleadings and demands strict proof thereof.

**II.****INFERENTIAL REBUTTALS**

2. Notwithstanding the foregoing, Lowe's asserts the following by way of inferential rebuttal and requests that the Court instruct the jury as follows:

- a. ***New and Independent Cause / Superseding Intervening Cause.*** The alleged damages in question as set forth in the Petition were caused by the conduct of Plaintiff, and that said conduct destroyed any causal connection between the alleged acts or omissions of Lowe's and the injuries complained of thus becoming an independent, superseding, or intervening cause of the Plaintiff's alleged damages.

b. ***Sole Proximate Cause.*** The act(s) or omission(s) of Plaintiff or a third party was the sole cause of the damages she alleges in the Petition and therefore, Lowe's is not liable to the Plaintiff.

**III.**  
**AFFIRMATIVE DEFENSES**

3. Pleading further, alternatively, and by way of affirmative defense, Lowe's asserts that any damages sought to be recovered by Plaintiff should be reduced to the extent that Plaintiff has failed to take the reasonable steps that a person of ordinary prudence in a similar situation would have taken to avoid and mitigate the claimed damages.

4. Pleading further, alternatively, and by way of affirmative defense, Lowe's asserts that in the unlikely event that an adverse judgment would be rendered against it, Lowe's would respectfully request all available credits and/or offsets as provided by the Texas Civil Practice & Remedies Code and under Texas law.

5. Lowe's hereby gives notice that it intends to rely upon such other defenses or denials, affirmative or otherwise, and to assert third-party claims and any other claims, as may become available or appear during discovery as it proceeds in this matter, and hereby reserves the right to amend its Original Answer to assert such defenses.

6. Pleading further, alternatively, and by way of affirmative defense, Lowe's asserts that in addition to any other limitation under law, Plaintiff's recovery of medical or health care expenses is limited to the amount actually paid or incurred

by or on behalf of Plaintiff, pursuant to Section 41.0105 of the Texas Civil Practice & Remedies Code.

7. Pleading further, alternatively, and by way of affirmative defense, Lowe's hereby affirmatively pleads that Plaintiff engaged in acts, including acts of negligence, which caused Plaintiff's alleged damages. Therefore, Plaintiff is barred, in whole or in part, from recovering any damages from Lowe's.

8. Pleading further, alternatively, and by way of affirmative defense, Lowe's hereby requests that the trier of fact in this matter, after a trial on the merits, consider and determine the percentage of responsibility of Plaintiff and any other party or responsible third party pursuant to Chapter 33 of the Texas Civil Practice & Remedies Code.

9. Pleading further, alternatively, and by way of affirmative defense, Lowe's asserts that Plaintiff's claims of physical and/or mental ailments in this cause were, in whole or in part, proximately caused solely and/or proximately by prior and/or subsequent accidents, events, or occurrences. Lowe's further asserts that Plaintiff's claims of injuries and damages are the result in whole or in part of pre-existing conditions, injuries, diseases, and disabilities and not the result of any act or omission on the part of Lowe's.

10. Pleading further, alternatively, and by way of affirmative defense, Lowe's alleges that the accident made the basis of this lawsuit was just that, an accident, not caused by the negligence of any party.

11. By way of affirmative defense, Plaintiff's claims, if any, for lost wages and/or loss of future earning capacity are barred, limited, restricted, and/or governed by the provisions of the Texas Civil Practice & Remedies Code Chapter 18, and any other applicable statute concerning the recovery of damages and the common law of Texas and limiting same to the net loss after reduction for income tax payments or unpaid tax liability thereon. Accordingly, Lowe's specifically pleads the limitations, restrictions and/or bar on the recovery by Plaintiff of such damages in accordance with Chapter 18 and other applicable law.

**IV.**  
**JURY DEMAND**

12. In accordance with Rule 216 of the Texas Rules of Civil Procedure, Defendant demands a trial by jury.

**PRAYER**

13. Defendant, Lowe's Home Centers, LLC, prays that Plaintiff take nothing by her lawsuit, that Lowe's go hence with its costs without delay, and for such other and further relief, both general and special, at law and in equity, to which Lowe's may show itself justly entitled.

Respectfully submitted,

**MAYER LLP**

/s/ Jason M. Gunderman

Kevin P. Riley  
State Bar No. 16929100  
[kriley@mayerllp.com](mailto:kriley@mayerllp.com)  
Jason M. Gunderman  
State Bar No. 24085349  
[jgunderman@mayerllp.com](mailto:jgunderman@mayerllp.com)  
4400 Post Oak Parkway, Suite 1980  
Houston, Texas 77027

**ATTORNEYS FOR DEFENDANT  
LOWE'S HOME CENTERS, LLC**

**CERTIFICATE OF SERVICE**

This is to certify that on the 1<sup>st</sup> day of October 2021, a true and correct copy of the foregoing has been forwarded to all counsel of record as follows:

	<input type="checkbox"/> E-MAIL
Joshua R. Leske	<input type="checkbox"/> HAND DELIVERY
Husain Law & Associates, PC	<input type="checkbox"/> FACSIMILE
5858 Westheimer Road, Suite 400	<input type="checkbox"/> OVERNIGHT MAIL
Houston, Texas 77057	<input type="checkbox"/> REGULAR, FIRST CLASS MAIL
Email Service: <a href="mailto:eserve@hlalawfirm.com">eserve@hlalawfirm.com</a>	<input checked="" type="checkbox"/> E-FILE AND SERVE
	<input type="checkbox"/> E-SERVICE ONLY
<b><i>COUNSEL FOR PLAINTIFF</i></b>	<input type="checkbox"/> CERTIFIED MAIL/RETURN RECEIPT REQUESTED

/s/ Jason M. Gunderman  
Jason M. Gunderman

**Automated Certificate of eService**

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Kathryn Keefer on behalf of Jason Gunderman  
Bar No. 24085349  
kkeefer@mayerllp.com  
Envelope ID: 57798474  
Status as of 10/1/2021 2:36 PM CST

**Case Contacts**

Name	BarNumber	Email	TimestampSubmitted	Status
Jason Gunderman		jgunderman@mayerllp.com	10/1/2021 1:32:26 PM	SENT
Kathy Keefer		kkeefer@mayerllp.com	10/1/2021 1:32:26 PM	SENT
Kevin Riley		kriley@mayerllp.com	10/1/2021 1:32:26 PM	SENT
Dinorah DScholl		dscholl@mayerllp.com	10/1/2021 1:32:26 PM	SENT

# EXHIBIT 3

*( State Court Docket Sheet)*

**HCDistrictclerk.com**

MACKRIZZ, VIOLET vs. LOWE???S HOME CENTERS

10/11/2021

LLC

Cause: 202152207

CDI: 7

Court: 113

**APPEALS**

No Appeals found.

**COST STATEMENTS**

No Cost Statements found.

**TRANSFERS**

No Transfers found.

**POST TRIAL WRITS**

No Post Trial Writs found.

**ABSTRACTS**

No Abstracts found.

**SETTINGS**

No Settings found.

**NOTICES**

No Notices found.

**SUMMARY****CASE DETAILS****File Date** 8/20/2021**CURRENT PRESIDING JUDGE****Case (Cause) Location** Civil Intake 1st Floor**Court** 113<sup>th</sup>**Case (Cause) Status** Active - Civil**Address** 201 CAROLINE (Floor: 10)**Case (Cause) Type** Premises

HOUSTON, TX 77002

Phone:7133686113

**Next/Last Setting Date** N/A**JudgeName** RABEEA COLLIER**Jury Fee Paid Date** 10/1/2021**Court Type** Civil**ACTIVE PARTIES**

Name

Type

Post Attorney  
Jdgm

MACKRIZZ, VIOLET

PLAINTIFF - CIVIL

LESKE,  
JOSHUA  
ROBERT

LOWE???S HOME CENTERS LLC

DEFENDANT - CIVIL

GUNDERMAN,  
JASON MLOWE'S HOME CENTERS LLC (IS A FOREIGN  
LIMITED LIABILITY COMPANY)

REGISTERED AGENT

**INACTIVE PARTIES**

No inactive parties found.

**JUDGMENT/EVENTS**

Date	Description	Order Signed	Post Jdgm	Pgs /Page	Volume	Filing Attorney	Person Filing
10/1/2021	JURY FEE PAID (TRCP 216)			0			
10/1/2021	ANSWER ORIGINAL PETITION			0		GUNDERMAN, JASON M	LOWE???S HOME CENTERS LLC
10/1/2021	JURY FEE PAID (TRCP 216)			0			
8/20/2021	ORIGINAL PETITION			0		LESKE, JOSHUA ROBERT	MACKRIZZ, VIOLET

**SERVICES**

Type	Status	Instrument	Person	Requested	Issued	Served	Returned	Received	Tracking	Deliver To
CITATION	SERVICE RETURN/EXECUTED	ORIGINAL PETITION	LOWE'S HOME CENTERS LLC (IS A FOREIGN LIMITED LIABILITY COMPANY)	8/20/2021	8/24/2021	9/13/2021			9/14/2021	73905928 E-MAIL

211 E 7H STREET SUITE 620 AUSTIN TX 78701

**DOCUMENTS**

Number	Document	Post Jdgm	Date	Pgs
98194866	Defendant Lowe's Home Centers, LLC's Original Answer		10/01/2021	6
97863256	Return of Service		09/14/2021	1
97468218	PLAINTIFF'S ORIGINAL PETITION		08/20/2021	5
-> 97468219	REQUEST FOR ISSUANCE OF SERVICE		08/20/2021	1

# EXHIBIT 4

*(List of All Counsel of Record)*

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

VIOLET MACKRIZZ, §  
*Plaintiff*, §  
v. § CIVIL ACTION NO. \_\_\_\_\_  
LOWE'S HOME CENTERS, LLC, §  
*Defendant*. § JURY TRIAL DEMANDED

**COUNSEL OF RECORD AND INFORMATION PURSUANT TO**  
**LOCAL RULE CV-81(C)**

(1) A list of all parties in the case, their party type (e.g., plaintiff, defendant, intervenor, receiver, etc.) and current status of the removed case (pending, dismissed);

*Plaintiffs*      Violet Mackrizz

*Defendant*      Lowe's Home Centers, LLC

The removed case is currently pending.

(2) A civil cover sheet and a certified copy of the state court docket sheet; a copy of all pleadings that assert causes of action (e.g. complaints, amended complaints, supplemental complaints, counterclaims, cross-actions, third party actions, interventions, etc.); all answers to such pleadings and a copy of all process and orders served upon the party removing the case to this court, as required by 28 U.S.C. § 1446(a).

See attached civil cover sheet and documents attached to Defendant's Notice of Removal as *Exhibit "A."*

(3) A complete list of attorneys involved in the action being removed, including each attorney's bar number, address, telephone number and party or parties represented by him/her;

**Husain Law & Associates, PC**  
**Joshua R. Leske**  
State Bar No. 24060162  
5858 Westheimer Road, Suite 400  
Houston, Texas 77057  
Email Service:  
[eserve@hlalawfirm.com](mailto:eserve@hlalawfirm.com)

**COUNSEL FOR PLAINTIFF**

**MAYER LLP**  
**Kevin P. Riley**  
State Bar No. 16929100  
Federal Bar No. 16929100  
E-mail: [kriley@mayerllp.com](mailto:kriley@mayerllp.com)  
**Jason Gunderman**  
State Bar No. 24085349  
Southern Bar No. 3395605  
Email: [jgunderman@mayerllp.com](mailto:jgunderman@mayerllp.com)  
4400 Post Oak Parkway, Suite 1980  
Houston, Texas 77027  
713.487.2000/713.487.2019 – fax

*Counsel for Defendant*  
**LOWE'S HOME CENTERS, LLC**

(4) A record of which parties have requested a trial by jury (this information is in addition to placing the word "jury" at the top of the Notice of Removal immediately below the case number);

Defendant has requested a trial by jury.

(5) The name and address of the court from which the case is being removed.

113<sup>th</sup> District Court of Harris County, Texas  
Honorable Rabeea Collier  
201 Caroline  
10<sup>th</sup> Floor  
Houston, Texas 77002  
T: 713.368.6113